

Olan Mills Studios does not profess to be an expert on the capabilities of the telephone network. However, the very carriers who design and operate the network seem to believe that the Commission's proposal cannot be implemented at this time without significant difficulties and costs. Olan Mills urges the Commission to carefully consider the comments of the carriers and refrain from enacting regulations which would place costly and burdensome requirements on the LECs and their ratepayers.

**3. Time-of-Day Restrictions Do Not Add Any  
Significant Protections for Consumers**

Finally, as discussed in its comments, Olan Mills does not believe that time-of-day restrictions would allow the Commission to fulfill its statutory mandate under the Act. The Act directs the Commission to enact procedures to protect residential telephone subscribers' privacy rights. Simply limiting telemarketing calls to certain hours of the day does not provide consumers with a mechanism to discontinue unwanted solicitations. Most of the parties commenting in this proceeding seem to take a similar view. Further, there has been no showing that the proposed 9 a.m. to 9 p.m. limitation would have any significant effect on the current patterns of telemarketing calls. And as the Commission points out, more restrictive limitations would impose an unacceptable burden on commerce.

**IV. THE COMMISSION SHOULD NOT ADOPT FURTHER EXEMPTIONS FROM THE ACT**

**A. De Minimis Exemptions**

Some companies suggest that the Commission adopt a "de minimis" exemption from whatever rules are eventually adopted by the Commission for certain telephone marketing operations.<sup>35</sup> These companies argue that "small, direct sellers be given protection in the FCC rules and differentiated from the national telemarketers."<sup>36</sup> Interestingly, a similar proposal is made by two large companies conducting business nationwide.<sup>37</sup> The basis for their proposed exemption appears to be that they call locally, and infrequently. The Commission, however, has no authority under the statute totally to exempt these categories of telemarketers from the rules. Therefore, Olan Mills urges the Commission to refrain from adopting any improper exceptions.

While Olan Mills is sympathetic to the difficulties associated with employing thousands of telemarketers nationwide, Congress clearly did not intend for these types of companies to be completely exempted from the Commission's

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<sup>35</sup> See Comments of JC Penney at 18.

<sup>36</sup> Comments of Amway at 3.

<sup>37</sup> See Comments of JC Penney at 18; Comments of Sears at 6.

rules. Rather, the language contained in Section 228 c(1)(D) of the statute carefully states that the Commission may consider "whether different methods and procedures may apply for local telephone solicitations".<sup>38</sup> It does not provide the Commission with the authority to exempt completely a certain category of telemarketers from its rules. The legislative history indicates that this provision was included to ensure that if the Commission adopted regulations which it believed would be particularly burdensome on localized telemarketers, that it would be free to implement different procedures for these companies in light of the self-policing pressures that exist on telemarketers operating solely within a community.<sup>39</sup> Nowhere in the legislative history, however, or the statute itself does Congress grant the Commission the authority to totally exempt these categories of telemarketers from the Commission's rules.

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<sup>38</sup> TCPA at § c(1)(D).

<sup>39</sup> See Additional Comments of Senator Pressler, the bill's sponsor, "this provision does not give any group a blanket exemption from the FCC regulations." Indeed, Olan Mills was one of the parties primarily responsible for this Section's inclusion in the statute. See Cong. Record (daily ed. November 18, 1991) H10344 (specifically mentioning Olan Mills as an example of companies doing businesses in a local setting).

**B. The Commission Should Not Adopt Additional Exemptions From Its Automated Calling Rules**

The NPRM suggests several exemptions to the automatic dialing system requirements. Specifically, the Commission proposes to exempt noncommercial calls, commercial calls that do not transmit an advertisement, calls by tax exempt nonprofit organizations and calls to former or existing clientele. Several of these exemptions are provided for in the statute for live operator solicitations, but not included for calls made by automated dialing systems with prerecorded or computer generated voices. However, Olan Mills is concerned about enacting further exemptions to the legislation which might allow callers to continue to receive calls to which they object.

Olan Mills would note that the TCPA imposes very stringent conditions on the ability of the Commission to exempt telemarketers from the restrictions on the use of automated telephone equipment as described in Section 228(b)(1)(B). While exemptions may be granted under the statute for noncommercial calls, the Commission may only grant an exemption for commercial calls if they "will not adversely affect the privacy rights that this section is intended to protect."<sup>40</sup> Therefore, Olan Mills questions the

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<sup>40</sup> TCPA at § b(2)(B).

basis for the Commission proposing to exempt commercial calls.

The legislative history of the TCPA reflects Congress' belief that calls made using ADRMs are more intrusive to the privacy concerns of telephone subscribers than calls made by live operators.<sup>41</sup> The Commission also has found that solicitations made by ADRMs are more intrusive and bothersome for telephone subscribers in that these calls "generate the bulk of consumer telemarketing complaints . . . ." <sup>42</sup>

Olan Mills urges the Commission not to expand on the exemptions already contained in the statute. Both Congress and the Commission have found that ADRMs solicitations are more bothersome to consumers, and represent the bulk of consumer frustration. Thus, there seems to be no reason to allow further exemptions than necessary. Olan Mills urges the Commission to refrain from adopting exemptions from its ADRM rules.

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<sup>41</sup> The Senate found that "automated telephone calls that deliver an artificial and prerecorded voice message are more of a nuisance and a greater invasion of privacy than calls placed by 'live' persons." See Automated Telephone Consumer Protection Act S. Rpt. No. 102-178 102d Cong., 1st Sess. (1991).


<sup>42</sup> NPRM at 11.

**V. CONCLUSION**

Based on the foregoing, Olan Mills urges the Commission to adopt flexible regulations that would require companies to develop a company-specific DNC mechanism.

Respectfully submitted,

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